

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Apr 16, 2024**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

GENEVA LANGWORTHY,

Plaintiff,

v.

ZACH MYERS,

Defendant.

No. 2:24-CV-00089-MKD

ORDER DISMISSING PLAINTIFF'S  
COMPLAINT WITH PREJUDICE

**ECF No. 1**

Before the Court is Plaintiff's *pro se* Complaint, filed on March 21, 2024. ECF No. 1. By separate Order, the Court granted Plaintiff leave to proceed *in forma pauperis*. This is the second case Plaintiff has filed in this District this year.<sup>1</sup> *See Langworthy v. Perky*, No. 2:24-CV-00060-MKD (E.D. Wash. Feb. 21, 2024). Having reviewed Plaintiff's Complaint, the Court is fully informed.

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<sup>1</sup> Plaintiff has filed multiple actions in other courts in recent years. *See, e.g., Langworthy v. Clallam Cnty.*, No. 23-35204, 2023 WL 10450437, at \*1 (9th Cir. Dec. 18, 2023) (dismissing appeal as frivolous); *Langworthy v. Settle*, No. 3:24-

## BACKGROUND

Plaintiff alleges her right to effective assistance of counsel under the Sixth Amendment of the U.S. Constitution has been violated. ECF No. 1 at 3. Plaintiff alleges Defendant Zach Myers is an attorney who was assigned to represent her in “bogus misdemeanor charges from Clallam County”. *Id.* at 4. Plaintiff alleges that “[Mr. Meyers] has never spoken to [her] nor taken any action in [her] defense” and that “when [she has] attempted to call his office, the receptionist screams at [her] and then hangs up”. *Id.* Plaintiff claims that she has been unable to set foot on her property in Clallam County, Washington since June of 2022 because of the inaction of Defendant, and that she cannot access her personal items on the property because there are two warrants against her. *Id.* at 5.

Plaintiff further claims that she cannot obtain her commercial drone license or enter Canada due to the warrants against her, and that she was forced to “flee the

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CV-05080-SAB, 2024 WL 381148 (W.D. Wash. Feb. 1, 2024); *Langworthy v. App. L. Firm*, No. 2:22-CV-12564, 2023 WL 3186956, at \*1 (E.D. Mich. May 1, 2023), *appeal dismissed*, No. 23-1435, 2023 WL 5163989 (6th Cir. May 15, 2023), *and appeal dismissed*, No. 23-1396, 2023 WL 5841955 (6th Cir. June 7, 2023); *Langworthy v. New Mexico State Police*, No. 123CV00684DHUJFR, 2023 WL 6144505, at \*1 (D.N.M. Sept. 20, 2023).

1 State of Washington because of the extraordinary violations of her civil rights.” *Id.*  
2 Plaintiff alleges that Defendant attempted to withdraw from representing her after  
3 being appointed for about a year without seeking leave of the Court, but the Court  
4 reappointed him. *Id.* Plaintiff alleges that the “Court is grossly biased against  
5 [her]” and the Court reappointed Defendant to continue representing her to thwart  
6 her attempts to defend herself. *Id.*

7 In her Complaint, Plaintiff seeks a jury trial, \$500,000 in damages, and an  
8 injunction requiring Defendant to seek leave of the Court to withdraw from  
9 representing her. *Id.* at 7.

## 10 ANALYSIS

### 11 A. 28 U.S.C. § 1915 Review

12 When an individual seeks to proceed *in forma pauperis*, the Court is  
13 required to review the complaint and dismiss such complaint, or portions of the  
14 complaint, if it is “(i) frivolous or malicious; (ii) fails to state a claim upon which  
15 relief may be granted; or (iii) seeks monetary relief from a defendant who is  
16 immune from such relief.” 28 U.S.C. § 1915(e)(2); *Wong v. Bell*, 642 F.2d 359,  
17 361-62 (9th Cir. 1981). A plaintiff’s claim is frivolous “when the facts alleged rise  
18 to the level of the irrational or the wholly incredible, whether or not there are  
19 judicially noticeable facts available to contradict them.” *Denton v. Hernandez*, 504  
20 U.S. 25, 32-33 (1992).

1 A claim is legally frivolous when it lacks an arguable basis either in law or  
2 fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989), *superseded by statute on other*  
3 *grounds as stated in Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en  
4 banc); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984). Therefore, the  
5 Court may dismiss a claim as frivolous where it is “based on an indisputably  
6 meritless legal theory” or where the “factual contentions are clearly baseless.”  
7 *Neitzke*, 490 U.S. at 327. The critical inquiry is whether a constitutional claim has  
8 an arguable basis in law and fact. *See Jackson v. Arizona*, 885 F.2d 639, 640 (9th  
9 Cir. 1989), *superseded by statute on other grounds, Lopez*, 203 F.3d at 1130-31;  
10 *Franklin*, 745 F.2d at 1227.

11 The facts alleged in a complaint are to be taken as true and must “plausibly  
12 give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009).  
13 Mere legal conclusions “are not entitled to the assumption of truth.” *Id.* The  
14 complaint must contain more than “a formulaic recitation of the elements of a  
15 cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The  
16 complaint must plead “enough facts to state a claim to relief that is plausible on its  
17 face.” *Id.* at 570. Liberally construing the complaint in the light most favorable to  
18 Plaintiff, the Court finds that Plaintiff has failed to state a claim upon which relief  
19 may be granted.  
20

1        *1. Ineffective Assistance of Counsel Claim*

2        The issue here is whether Plaintiff has stated a plausible claim that she was  
3 denied the effective assistance of counsel. The Supreme Court has recognized that  
4 the Sixth Amendment right to counsel exists and is needed to protect the  
5 fundamental right to a fair trial. *Strickland v. Washington*, 466 U.S. 668, 685  
6 (1984). To prevail on an ineffective assistance of counsel claim, “a defendant must  
7 show (1) that an error by counsel was professionally unreasonable and (2) that  
8 there was a reasonable probability that but for counsel’s unprofessional errors, the  
9 *result of the proceeding* would have been different. A reasonable probability is a  
10 probability sufficient to undermine confidence in the outcome.” *U.S. v.*  
11 *Carmichael*, 372 F. Supp. 2d 1331, 1333 (M.D. Ala. 2005) (citing *Strickland*, 466  
12 U.S. at 691-94) (emphasis in original) (quotation marks altered).

13        First, an ineffective assistance of counsel claim cannot be brought in a civil  
14 action. *See Nelson v. Campbell*, 541 U.S. 637, 643 (2004). “Claims for ineffective  
15 assistance of counsel are not recognized under § 1983, despite the statute’s ‘literal  
16 applicability’ to the Sixth Amendment, because specific appellate and habeas  
17 statutes apply.” *See id.* Plaintiff is not bringing a Section 1983 claim here,  
18 however the reasoning of *Campbell* forecloses her civil action for ineffective  
19 assistance of counsel.

1 Second, criminal defendants must initially seek post-conviction relief in  
2 state courts. *Christensen v. Nguyen*, No. 220CV01770APGDJA, 2020 WL  
3 6136220, at \*4 (D. Nev. Oct. 19, 2020) (citing *Morgano v. Smith*, 879 P.2d 735,  
4 739 n.3 (Nev. 1994) (where instances of alleged negligence are based primarily on  
5 the ineffective assistance of counsel, post-conviction proceedings, rather than civil  
6 proceedings, provide litigants with a more appropriate forum to present their  
7 claims)). As such, a civil action in federal court is not the appropriate forum for  
8 the plaintiff to present her claim.

9 Third, an action for legal malpractice or ineffective assistance of counsel  
10 does not accrue until the underlying proceeding or criminal case is resolved. *Dunn*  
11 *v. Christensen*, 2018 WL 615671, at \*8 (D. Nev. Jan. 29, 2018). A criminal  
12 defendant cannot state a claim of ineffective assistance of counsel until she has  
13 suffered prejudice (*i.e.*, damages), even though she reasonably believes counsel  
14 committed errors or omissions during the course of the proceedings. *Id.* (citing  
15 *Clark v. Robinson*, 944 P.2d 788, 790 (Nev. 1997)). Supreme Court precedent  
16 shows that an ineffective assistance of counsel claim must be raised in direct  
17 appeals, post-conviction, or habeas corpus proceedings. *See Campbell*, 541 U.S. at  
18 643; *accord Carmichael*, 372 F. Supp. 2d at 1333 (discussing that claims for  
19 ineffective assistance of counsel can only be raised in post-conviction proceedings  
20 because the very standard used to evaluate such claims presupposes that the claim

1 is raised post-trial). Here, Plaintiff asserts an ineffective assistance of counsel  
2 claim without alleging any facts that her criminal trial has concluded, or even that  
3 she will proceed to trial on any charges.

4 Putting aside the fact that Plaintiff's claim is premature, she has not stated a  
5 plausible claim for relief. Even construing the sparse facts liberally in favor of  
6 Plaintiff, the Court cannot determine how Defendant allegedly deprived Plaintiff of  
7 any rights. Plaintiff claims that Defendant is an attorney who was appointed to  
8 defend her against "bogus misdemeanor charges" in Clallam County, Washington.  
9 ECF No. 1 at 4. However, she has not provided a case number, specified what the  
10 charges were, what stage the proceedings are in, or provided any facts to support  
11 her contention that Defendant was appointed to defend her against such charges.  
12 *See id.* at 7. Plaintiff claims that she has been forced to "flee the State of  
13 Washington because of the extraordinary violations of her civil rights" but does not  
14 specify why she has had to flee the state or which of her civil rights were violated.  
15 *See id.* Last, Plaintiff claims that the "Court" is "grossly biased" against her and is  
16 conspiring to thwart her attempts to defend herself by reappointing Defendant to  
17 represent her. *See id.* It is not clear which court she refers to, nor does she allege  
18 any facts supporting the assertion that a court is conspiring against her. *See id.*  
19 Plaintiff has not demonstrated that Defendant has violated any of her federal  
20 constitutional rights.

1 Further, Plaintiff's claims are mere legal conclusions as she states Defendant  
2 has deprived her of her rights and caused damages but does not plead enough facts  
3 to state a claim to relief that is plausible on its face. *See* ECF No. 1; *see Iqbal*, 556  
4 U.S. at 664; *see also Twombly*, 550 U.S. at 555. Her legal conclusions are not  
5 entitled to the presumption of truth. *Iqbal*, 556 U.S. at 664. In sum, Plaintiff has  
6 not demonstrated that this Court has jurisdiction over the case, nor has Plaintiff  
7 stated a plausible claim. As such, the Court must dismiss the case with prejudice  
8 pursuant to 28 U.S.C. § 1915.

9 The Court declines to grant Plaintiff an opportunity to amend. Unless it is  
10 clear that an amendment would be futile, a *pro se* litigant must be given the  
11 opportunity to amend his complaint to correct any deficiencies. *Noll v. Carlson*,  
12 809 F.2d 1446, 1448 (9th Cir. 1987), *superseded by statute on other grounds*, 28  
13 U.S.C. § 1915(e)(2), *as stated in Aktar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir.  
14 2012). Plaintiff cannot overcome the fact that the Sixth Amendment does not  
15 create a civil cause of action, nor could she cure the fact that her ineffective  
16 assistance of counsel claim was premature by alleging further facts. As the  
17 deficiencies cannot be cured, allowing amendment would be futile. Fed. R. Civ. P.  
18 15(a)(2); *Gordon v. City of Oakland*, 627 F.3d 1092, 1094 (9th Cir. 2010) (citing  
19 *Albrecht v. Lund*, 845 F.2d 193, 195 (9th Cir. 1988)).  
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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Complaint, **ECF No. 1**, is **DISMISSED WITH**  
3 **PREJUDICE.**

4 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order,  
5 provide copies to *pro se* Plaintiff, and **CLOSE** the file.

6 DATED April 16, 2024.

7 *s/Mary K. Dimke*  
8 MARY K. DIMKE  
9 UNITED STATES DISTRICT JUDGE  
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